

BEFORE THE HON'BLE LOKAYUKTA DELHI

JUSTICE REVA KHETRAPAL

COMPLAINT NO. C-2444/LOK/2013

IN THE MATTER OF:

SHRI MAHESH KUMAR

.... COMPLAINANT

VERSUS

SMT. MANJU DEVI, COUNCILLOR & ANR

... RESPONDENTS

PRESENT: Shri Mahesh Kumar, complainant in person.

Shri Anish Dayal, Advocate, Amicus Curiae.

Shri Hari Dutt Sharma, Advocate, Counsel for
respondent No.1.

Shri Yudhvir Singh, Licensing Inspector (Rohini Zone), on
behalf of North Delhi Municipal Corporation.

ORDER

1. The present complaint is filed by the Complainant Shri Mahesh Kumar, who claims himself to be an RTI Activist, on 22-11-2013 against the Respondents No. 1 & 2 viz. the Municipal Councillor, Ward No.38, Smt. Manju Devi, and the Assistant Commissioner, Rohini Zone, North Delhi Municipal Corporation, alleging misuse of public funds by way of distribution of old age pension to persons who are not eligible for the same as they have not attained the age of sixty, which

is a pre-requisite for old age pension; and also by distributing double pension to the same persons, which he alleges is being done with the active collusion and connivance of the Respondent Municipal Councillor and the concerned Assistant Commissioner, North DMC.

2. It is further alleged that as the Municipal Councillor of the area it is the duty of the Respondent Councillor to attest and forward applications of pensioners to Respondent No.2; while the Respondent No.2 was to verify the documents through his staff and allow the applications for pension. However, both the Respondent No.1 Councillor and the Respondent No.2, in collusion and conspiracy with each other and on the basis of false, forged and fabricated documents were distributing pension to ineligible persons and receiving commission from them. Thus, both the Respondents as public functionaries were abusing and misusing their respective positions with improper and corrupt motives in order to obtain fraudulent gains and hence, both were guilty of corruption.
3. In support of his allegations, the Complainant has filed two lists of ineligible persons receiving pension, which, according to him, were obtained by him by filing an application under the Right to Information Act to the Delhi Municipal Corporation Office, Rohini Zone, Delhi. The first list purports to show that

five persons were drawing double pension against the same voter ID Cards submitted as proof of identification, while the second list shows that fifty-six persons were being paid old age pension though they were not entitled for the same being under the age of 60 years, two of them being as young as 18 and 26 years respectively.

4. Upon issuance of show cause notice to the Respondent No. 1 (the Respondent No. 2 not being a public functionary within the meaning of Section-7 read with Section- 2(b) of the Lokayukta & Upalokayukta Act, 1995), the Respondent No.1 appeared through her counsel and filed a reply denying the allegations levied in the complaint and stating that all the allegations were false, baseless and defamatory and none of the acts as mentioned in the complaint falls within the aforesaid sections of the Act. It was, inter alia, contended by the Respondent-Councillor in her reply that as per the prescribed procedure, her role was limited to forwarding the application forms of the applicants to the North Delhi Municipal Corporation, and it was the duty of the Zonal authority to distribute pension to the eligible pensioners after checking all the documents and eligibility of such applicants. The Respondent has emphatically denied that it was her duty to verify the documents through her staff and allow the

applications for pensions, as alleged. The Respondent also denied the allegations of conspiracy and collusion with the Respondent No.2, and of forgery and fabrication of documents for the purpose of grant of pension to ineligible persons, and receiving commission therefor. To buttress this contention, the Respondent-Councillor annexed as Annexure-A to her reply a copy of Office Order dated 18-08-2008 issued by the Director (Community Services Department), Delhi Municipal Corporation, which is described as "**Rules for the grant of Old age Stipend**". The same shall be adverted to at the relevant time while examining the role of the Respondent Councillor in the grant and disbursement of old age pension.

5. In the Reply Affidavit filed by the Respondent No.2, Smt. Raj Rani, the concerned Additional Deputy Commissioner, Rohini Zone, North DMC, it is stated that the records of all the persons named in the complaint were checked, and it was found that all the persons were aged more than 60 years, and the age proof of each of them was attached with their respective application form, except for one Shri Ashok Kumar Singh, who, as per the age proof, was of 45 years of age as on date, but was granted old age pension after his application was duly certified by Smt. Manju Devi, the then Municipal Councillor. Copies of the application forms along with the age

proof of all the persons were annexed with the reply as Annexure R-1 to R-56. Further, it was stated by the Respondent No.2 that appropriate action was being envisaged against the guilty officers of the Corporation and necessary action was also being taken against Shri Ashok Kumar, who was found to be below the stipulated age for grant of old age pension.

6. With regard to the issue of payment of double pension, it is submitted by the Respondent No.2, that the relevant records had been checked by the concerned officers and upon inspection it was found that in the pension list, between October 2012 to March 2013, the names of five persons were listed twice due to mistake as a result of which double cheques were prepared for payment. However, while disbursing the cheques the said mistake was detected, and no double cheques were given to those persons by the concerned official viz., the Sanitary Inspector of Ward No.38, and in fact the duplicate cheques were returned back to the Accounts Section by him. Thereafter, immediately the duplicate names appearing in the list were removed and, thus, no double payment has been made after October 2012 to any pensioner. Even prior to October, 2012, no double payment has been detected on inspection of records. The matter was still being

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examined and if any double payment was detected the same would be recovered and deposited in the Accounts Section. Copies of the Memo dated 22-04-2016 issued to the concerned official of Rohini Zone by the Assistant Commissioner regarding the mentioning of some names more than once in the same list, resulting in revenue loss to the North DMC as also the reply furnished by the concerned official, have been annexed as Annexure R-57 and R-58 respectively. Significantly, the reply filed by the concerned official states that though there are five names which have been mentioned twice in the list, however, on checking of the records it has been found that no pension cheque had been disbursed to these persons for the period 01-10-2012 to 31-12-2012.

7. In his rejoinder to the reply affidavit of Respondent No.2, the Complainant has reiterated his allegations and submitted that the age proof of the applicants /pensioners furnished by the Respondent No.2 with the reply affidavit were fabricated. Further, the Respondent Councillor had not put date while signing/recommending the said applications, which was done to facilitate the Respondents in changing the copies of documents or application forms later on, if the need arose. Taking advantage of this absence of date, they have changed various forms and documents attached with application forms.

8. It was further contended by the Complainant in his rejoinder that while the Respondent-Councillor states that it was for the Corporation to verify the documents and grant pension, the Corporation's version is that they prepare pension on the basis of the recommendation by the Councillor. Thus, the Complainant states, it is evident that the Respondent Councillor and the Corporation are granting pension to ineligible candidates and are now misleading the Court. He has also dealt with Annexures R-1 to R-56 of the reply affidavit of the Corporation to demonstrate that there were discrepancies in the said documents furnished by the Corporation as reflected from the latest copies of voter ID Cards of the applicants in question obtained by him from the website of the Chief Electoral Office. The emphasis of the Complainant was to show that some of the pensioners in question, whose voter ID Cards were produced by the Corporation in support of their age, were much younger when they were granted old age pension and were thus ineligible for grant of such pension.
9. On 28-07-2016, on the request of the Complainant that he may be given legal assistance to enable him to put forth his case properly, Shri Anish Dayal, Advocate, was appointed as Amicus Curiae to assist this Forum.

10. On going through the documents and evidence available on record, including the complaint, replies filed by the Respondents and the rejoinder of the Complainant, a query was put by this Forum to the Complainant as to how he intended to prove the alleged complicity of the Respondent-Councillor in the misuse of funds from the Government exchequer. It was also explained to him both by this Forum and the learned amicus curiae that, as per Guidelines/Rules for grant of old age pension, laid down by the Delhi Municipal Corporation, Community Services Department vide Office Order dated 18-08-2008, the role of any area Councillor was limited to forwarding the application to the Corporation, and it was the Commissioner of the concerned Corporation who thereupon granted approval for grant of such old age pension, subject to verification of documents by the concerned officials of the Corporation.
11. The Complainant could not give any satisfactory and/or convincing reply to the said query put to him by this Forum, except vaguely saying that there was large scale misuse of funds in the Corporation, which could not have been possible without the knowledge and connivance of the concerned Councillor with the Corporation officials and, therefore, the

concerned Councillor was guilty of misuse of funds and corruption.

12. On being asked to express his opinion, the learned amicus curiae also submitted that as per the aforesaid Rules, the onus was upon the Commissioner, Delhi Municipal Corporation, to have verified the applications received, through an officer not below the rank of Assistant Commissioner, and then pass orders thereon. He further submitted that even otherwise there was nothing on record, by way of documentary evidence or otherwise, to establish the involvement, complicity or connivance of the Respondent-Councillor with the Corporation officials in the grant of pension to ineligible applicants as alleged in the complaint or otherwise.
13. Learned counsel for the Respondent No.1-Municipal Councillor also vehemently contended that as per the said Office Order dated 18-08-2008 issued by the Director (CSD), Delhi Municipal Corporation, with regard to grant of old age stipend, the Councillor had no say in the grant of such financial aid to any applicant and the decision of the Commissioner was to be final. The said Office Order dated 18-08-2008, he urged, clearly adumbrated the role, powers and functions of the Commissioner, Delhi Municipal Corporation and the Municipal Councillor vis-à-vis grant of old age pension.

14. My attention was specifically drawn to the relevant Clauses of the Office Order dated 18-08-2008 viz., Clauses 5, 6, 7, 9, 10, 11, 20 and 32 to urge that the said clauses were of immense significance insofar as they clearly delineate the role of the Commissioner, Delhi Municipal Corporation as being one of primary importance. For the sake of reference, however, the Office Order dated 18.08.2008, in its entirety, is being reproduced hereunder, the relevant Clauses whereof have been highlighted:-

**"MUNICIPAL CORPORATION OF DELHI
COMMUNITY SERVICES DEPARTMENT
7th Floor, 16, Rajpur Road, Civil Lines, Delhi -54**

No.480/CSD/HQ/2008

Dated 18.08.2008

(OFFICE ORDER)

Sub : Rules for the grant of Old age Stipend.

Corporation vide Resolution No.155 dated 30.06.2008 has approved the following rules & regulations for disbursement of Old Age Pension :-

"In supersession of all the previous Old age stipend rules following conditions are prescribed for the purpose of giving stipends to persons residing in Delhi within the MCD area who are 60 years old or above and do not have any support or source of income :-

1. The categories approved to be given the stipend without restriction on their age limit :

- i. The blinds
- ii. The widows
- iii. The insane
- iv. The Crippled
- v. The Widowers
- vi. The divorce Women

2. The Old age stipend may be paid by the Corporation at its discretion to persons of the age of 60 and above who do not have any support or any source of income.

3. The stipend shall be paid only to those residents of the Union Territory of Delhi who have been residing within the area of Municipal Corporation of Delhi for at least five years on the date of submission of the application.

4. The stipend will be paid at the rate of Rs.500/- Rs. P.M for one financial year. This amount may be revised by the corporation from time to time.

5. **Each person applying for grant of the stipend shall adduce evidence about his/her age and with regard to no source of income or support to the satisfaction of the Commissioner.**

6. **The Dy. Commissioner shall get the applications scrutinized and checked by any officer not below the rank of Assistant Commissioner and then pass orders.**

7. A person who will be granted the old age stipend shall be issued an identity card bearing full particulars and a passport size photograph duly authenticated by the officer authorized by the Commissioner in his behalf.

8. Each person applying for grant of the stipend shall submit two copies of his/her passport size recent photograph at his own cost. One copy shall be affixed on the identity card as prescribed in rule 7 and the other copy shall be affixed on the application.

9. The payment of the stipend may be withheld, withdrawn or stopped by the Commissioner, if in his opinion the information supplied by the applicant was found false, incorrect or based on a wrong certificate.

10. The payment of the stipend shall be received by the person concerned at the place fixed by the Commissioner. In case where the person in receipt of stipend cannot attend personally for reasons of sickness, the payment may be received from the Office of the Asstt. Commissioner of the concerned Zone under orders of the Commissioner.

11. A person having the benefit of old age stipend under these rules shall have to produce a certificate of his being alive, if he/she wants the amount of stipend to be received from the Office of the Asstt. Commissioner of the concerned Zone under orders of the Commissioner.

12. The payment of stipend shall cease on the death of the stipend holder and any arrears thereof shall not be claimed by any of the heirs.

13. The payment of stipend will be made only through A/c payee chequess in the account of the applicant.

14. An attested copy of Ration Card or Voter Identity Card or affidavit may be submitted by the applicant in respect of age proof.

15. The name of the applicant in voter list or ration card is compulsory.

16. The applicant should have S.B.Bank Account in any Bank.

17. The accounts opened by the pensioners in the Banks as well as in the Post Offices both should be considered. In case of handicapped license and crippled a joint account with the guardian may be accepted.

18. Banks/Post Offices do not allow mentally retarded persons to open an account in their branch, as such disbursement of payment due in regard to financial assistance to mentally retarded persons can be made by issuing the cheque in the name of his mother/father or department.

19. The applicant should not get any financial assistance from NDMC, Govt. of NCT of Delhi and other source.

20. **"The application form be certified by the funding Mpl. Councillor and checked by Zonal Authority".**

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21. The annual income from all resources should not exceed Rs.24000/-. This amount may be revised by the corporation from time to time.

22. All the columns of the application be filled up. Incomplete application shall be rejected.

23. Any area Councillor can transfer Old Age Pension quota from his ward to other ward within the zone only where eligible pensioners are less than the quota of the Councillor for which no additional budget required. In case any Area Councillor wants to transfer his/her quota from one Zone to the other Zone the proposal be put up by the concern Dy. Commissioner of the Zone with the budget allocation.

24. The discretionary quota (for MCD area) for Old Age Pension as well as financial assistance for marriage of the daughter of poor widows/Orphan girls.

25. All the Dy. Commissioners will submit the ward wise number of pensioners area Councillor quota as well as discretionary quota along with utilization Certificate on or before 31st March positively.

26. Once the quota of the old age stipend fixed will carry forward. New applications can be recommended by the area Councillor if the number of pensioners increased or dropout cases. This will be applicable in both cases discretionary quota as well as municipal Councillor quota.

27. Once Old age stipend sanctioned to the beneficiary, he/she shall continue till the fulfillment of rules & regulations.

The rejection of Old age stipend can take place on justified reasons.

28. The stipend to the divorce women and abandoned by her husband, the matter under trial in the Court, may also be given on the submission of Police verification/affidavit and attested by the RWA. From the divorced Muslim wives instead of taking divorce Certificate an affidavit from the divorcee is to be taken that she has not remarried and the same should be accepted.

In case of dispute between husband & wife, and husband deserted the wife to fend herself and an FIR of the case is already lodged with the police, then pension in form of financial assistance to such woman also would be given after five years of the police report.

29. The applicant and the certifying authority shall be liable to legal action for false or incorrect information and wrong certificate.

30. Fresh applications could be invited after every MCD general election in each quota.

31. "Both husband and wife can be given financial benefit in a nuclear family".

32. In all cases, the decision of the commissioner shall be final under these rules.

Note : These Rules will also be applicable in cases of marriage of widow's daughter for providing financial assistance as well

as in case of distribution of tricycles to handicapped persons and sewing machine to women.

This issues with the prior approval of the Competent Authority.

Sd/19.08.2008

(PUSHPA KUMARI)
DIRECTOR (CSD)

ALL DY. COMMISSIONER OF ZONES

Municipal Secretary

272 copies for circulation of Mpl. Councillor

Copy for information to :-

1. All Addl. Commissioners
2. Secy. To Commissioner for information of Commissioner
3. All DCAs
4. Dy. Director-II /CSD
5. Asstt. Director (HQ)
6. Accountant/CSD

Copy for kind information to :-

1. Hon'ble Mayor
2. Dy. Mayor
3. Chairman Standing committee
4. Dy. Chairman Standing Committee
5. Leader of the House
6. Leader of the House
7. Leader of the Opposition.

(PUSHPA KUMARI)
DIRECTOR (CSD)"

15. A conjoint reading of the above clauses of the Office Order for grant of old age stipend, in my view, makes it amply clear that the over-all responsibility of scrutiny of the documents furnished by an applicant, grant of pension/stipend, rejection

of any such application, and / or the withholding, withdrawal or stoppage of the same are vested with the Commissioner, Delhi Municipal Corporation, and the decision taken by the Commissioner, Delhi Municipal Corporation of either granting pension or rejecting the application, would be final, whereas the role of the area Municipal Councillor is limited to forwarding of such an application, being the funding Municipal Councillor.

16. In view of the aforesaid, this Forum is of the considered view that no substantive evidence has been brought on record to show that the Respondent-Councillor had any role to play in the grant of old age pension to the applicants in question, except that the Respondent-Councillor as a matter of routine was required to forward, and had forwarded the pension applications to the Corporation for consideration. Further, it is clear that as per the Rules/Guidelines laid down by the Community Service Department of the Delhi Municipal Corporation, the decision of the Commissioner, either granting or rejecting the applications for grant of pension, ***based on the verification report furnished by "an officer not below the rank of Assistant Commissioner", is to be final*** and thereafter withdrawing, withholding or stopping the pension granted was also within the domain of the Commissioner and the Councillor

has no say in the grant of such financial aid to an applicant. This being so, the Respondent-Councillor cannot be indicted on any count, much less for connivance, collusion, misuse of funds or corruption vis-à-vis grant of old age stipend to allegedly ineligible persons, as is sought to be made out in the complaint. It is only an assumption of the complainant that since the Respondent-Councillor forwards/recommends the applications for grant of pension, she inevitably has a role to play in the grant of such pensions to ineligible applicants. This assumption/contention is without merit, as this Forum cannot be oblivious to the Guidelines/Rules governing the grant of old age pension laid down by Municipal Corporation itself, which unequivocally stipulate that the decision taken by the Commissioner on such applications, on the basis of verification reports to be furnished by his officials not below the rank of Assistant Commissioner, shall be final and binding. This leaves no scope for any hypothesis regarding the alleged role of the Respondent-Councillor.

17. For the facts and reasons discussed above, this Forum finds the present complaint to be devoid of any merit and the same is accordingly dismissed. Resultantly, show cause notice issued to the Respondent-Councillor under Section-7 read with Section

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2(b) of the Delhi Lokayukta & Uplokayukta Act, 1995, is discharged.

18. However, while dealing with the present complaint case, it has come to the notice of this Forum that old age pension is being granted, and may in the future be granted to persons who are below the age of 60 years and thus ineligible for grant of the said benefit. Similarly, instances of the same person being given double pension have been brought to the notice of this Forum, and have been admitted by the Municipal Corporation in this very complaint (though disbursement of cheques to them is denied by stating that the mistake was detected at the time of disbursement). Such mistakes, which have the potential of causing loss of revenue to the Exchequer could, in my view, have been averted if the concerned Municipal Councillor had been cautious enough to verify the age and identity of the person approaching him with an application for grant of old age pension, if necessary from the Electoral Rolls, and also to scrutinize the documents being submitted with the application in support of age proof and other aspects, instead of mechanically forwarding/recommending the request/application for grant of old age pension.

19. For the foregoing reasons, and with a view to weed out corruption in the grant of pension to the ineligible members of

the public, it is deemed expedient to invoke Section 16 of the Delhi Lokayukta & Upalokayukta Act, 1995, which reads as under :-

"16. Lokayukta to make suggestions - The Lokayukta, if in the discharge of his functions under this Act, notices a practice or procedure which in his opinion afforded an opportunity for corruption or mal administration, he may bring to the notice of the Government and may suggest such improvement in the said practice or procedure as he may deem fit."

20. Accordingly, the following suggestions for the improvement in the practice and procedure pertaining to issuance of old age stipend are being made:-

- i) **Applicants applying for old age pension or any other such kind of financial aid, expenditure of which is to be met from the fund of the area Municipal Councillor or otherwise, should present themselves before the concerned area Municipal Councillor in person for submission of applications along with the requisite documents, so that their physical age and identity and other particulars mentioned in the application can be *prima facie* verified by the area Municipal Councillor, before their cases are forwarded/recommended for**

grant of old age pension and/or any such other financial aid and an endorsement to this effect be made by the area Councillor in the prescribed form.

- ii) Applicants, while submitting the application to the area Municipal Councillor, must mandatorily produce the originals of documents attached with the application before the area Municipal Councillor for verification and comparison with the photocopies submitted with the application, and the Municipal Councillor shall endorse on each and every photocopy of the attached documents: "ORIGINAL SEEN" in his own hand, so as to obviate the possibility of any manipulation or submission of fabricated documents, at a later stage.
- iii) Applicants must submit all applications with their accompanying documents on Affidavits duly attested by an Oath Commissioner.
- iv) Each Municipal Councillor must maintain records in his office of each and every person whose case for grant of old age pension or any such other financial aid has been forwarded/recommended by him/her, in his/her capacity as the area Municipal Councillor, to eliminate the possibility of the same person/applicant applying

for grant of old age pension or other financial aid more than once.

- v) Copies of aforesaid records maintained by the office of the Municipal Councillor be forwarded to the Commissioner after authentication of the same on a quarterly basis.
 - vi) The Office of the Commissioner in turn shall furnish the record relating to the names, particulars, etc. of the applicants to whom pension / stipend has been granted by the Commissioner as also the names, particulars, etc. of those whose applications have been rejected with reasons therefor, by the Commissioner to the Office of the concerned area Municipal councillor.
21. A copy of this order containing the suggestions made hereinabove be forwarded to the Office of the Hon'ble Lieutenant Governor in terms of section 16 of the Delhi Lokayukta and Upalokayukta Act, 1995 for the consideration of His Excellency, the Hon'ble Lieutenant Governor.
22. Copies be also sent to the parties and thereafter the file be consigned to the Record Room.

DATE:17.03.2017

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(JUSTICE REVA KHETRAPAL)
LOKAYUKTA DELHI